

1 UNITED STATES DISTRICT COURT  
2 EASTERN DISTRICT OF TEXAS  
3 SHERMAN DIVISION

4 UNITED STATES OF AMERICA : DOCKET NO. 4:19CR309-3  
5 :  
6 VS. : SHERMAN, TEXAS  
7 : JANUARY 21, 2021  
8 MAXINE JULIETTE MITCHELL : 11:45 A.M.

9 SENTENCING HEARING  
10 BEFORE THE HONORABLE AMOS L. MAZZANT, III,  
11 UNITED STATES DISTRICT JUDGE

12 APPEARANCES:

13 FOR THE GOVERNMENT: MR. MATTHEW JOHNSON  
14 U.S. ATTORNEY'S OFFICE  
15 600 E. TAYLOR, SUITE 2000  
16 SHERMAN, TEXAS 75090

17 FOR THE DEFENDANT: MR. MARK ARONOWITZ  
18 LAW OFFICE OF A&K  
19 P.O. BOX 1201  
20 TEXAS CITY, TEXAS 77592

21 COURT REPORTER: MS. JAN MASON  
22 OFFICIAL REPORTER  
23 U.S. DISTRICT COURTHOUSE  
24 101 E. PECAN  
25 SHERMAN, TEXAS 75090

PROCEEDINGS REPORTED BY MECHANICAL STENOGRAPHY, TRANSCRIPT  
PRODUCED BY COMPUTER-AIDED TRANSCRIPTION.

1 THE COURT: The next case is 4:19CR309, United States  
2 of America versus Maxine Juliette Mitchell. For the  
3 Government?

4 MR. JOHNSON: Matt Johnson for the United States.

5 THE COURT: And for the Defendant?

6 MR. ARONOWITZ: Good morning, Mark Aronowitz,  
7 A-R-O-N-O-W-I-T-Z, on behalf of the Defendant.

8 THE COURT: Thank you. Welcome to Sherman. You had  
9 a little drive today.

10 And then, ma'am, you're here for your sentencing  
11 pursuant to your final Presentence Report that was filed on  
12 November 24th, 2020. Have you had a chance to review the  
13 final Presentence Report?

14 MS. MAXINE MITCHELL: Yes, Your Honor.

15 THE COURT: Have you had a chance to discuss it with  
16 counsel?

17 MS. MAXINE MITCHELL: Yes, Your Honor.

18 THE COURT: Do you understand the Presentence Report?

19 MS. MAXINE MITCHELL: Yes.

20 THE COURT: Do you believe the report adequately  
21 covers your background?

22 MS. MAXINE MITCHELL: Yes, I believe so, Your Honor.

23 THE COURT: And are you satisfied with the accuracy  
24 of the report?

25 MR. ARONOWITZ: The factual accuracy.

1 THE COURT: Just the factual part.

2 MS. MAXINE MITCHELL: Yes, Your Honor.

3 THE COURT: And then let me ask defense counsel, have  
4 you had a chance to review the final Presentence Report and do  
5 you believe your client understands it?

6 MR. ARONOWITZ: Yes, Your Honor.

7 THE COURT: And other than the objections you filed,  
8 any other comments, additions or corrections to the report?

9 MR. ARONOWITZ: No.

10 THE COURT: And on behalf of the Government, any  
11 comments, additions or corrections or objections?

12 MR. JOHNSON: No, Your Honor.

13 THE COURT: And then, sir, you have several  
14 objections, so I'll let you begin with objection number one.

15 MR. ARONOWITZ: Before we get to objection number  
16 one, I do want to make a brief comment on the criminal history.  
17 I'm not sure it makes a big difference, seeing the history is  
18 one, but I do -- it is, I think, important to understand that  
19 the conviction she had in California was a mutual conviction  
20 where her husband and her were in a fight. They both were  
21 convicted. It wasn't a situation where she attacked him  
22 solely.

23 So I think the criminal history over-emphasizes her  
24 role in that aspect, so I did want to bring that up. And  
25 that person did later get convicted for assaulting her on

1 numerous other occasions.

2 THE COURT: Okay. So we'll go ahead and proceed.

3 MR. ARONOWITZ: But in terms of the specific  
4 objections, may I proceed?

5 THE COURT: Yes, go to your first objection.

6 MR. ARONOWITZ: Yes. Our first objection involves  
7 the two point adjustment, upward adjustment for the firearm.  
8 In this case, a little background, Ms. Mitchell was the  
9 paramour of another co-defendant in this case and lived in the  
10 home with him, and that individual was by far the large -- the  
11 larger participant in the actual conspiracy. Ms. Mitchell was  
12 more closer to -- well, basically she was a homemaker with a  
13 lot of drugs in the house.

14 So one of the things that was given to the co-defendant  
15 as a gift was a firearm, and that firearm was kept in the  
16 home. There's no -- and the co-defendant gave a statement  
17 saying it was a gift to him. It was his personal property.  
18 It was found in a closet.

19 Ms. Mitchell had, although I guess technically  
20 constructive access to the weapon, it wasn't her weapon.  
21 She never touched it. There was never any indication in any  
22 record that she had anything to do with using a weapon in  
23 furtherance of this conspiracy or at any time in the  
24 conspiracy.

25 So we believe that, although we understand the burden

1 is low, there is still some burden to show she had some  
2 personal connection to that weapon, not just the fact that  
3 she lived there. I don't believe mere presence in the -- in  
4 the residence is enough to give the two point adjustment.  
5 So that's our first objection.

6 THE COURT: Mr. Johnson.

7 MR. JOHNSON: Your Honor, I think the legal analysis  
8 contained in the Presentence Report is accurate.

9 She had constructive possession of the firearm, and I  
10 think that's the key issue here when you're talking about  
11 reasonable foreseeability and possession of a firearm by a  
12 co-conspirator is she does have to possess it.

13 But the Fifth Circuit has been clear that when it comes  
14 to possession, it can be constructive possession. And  
15 because that was her apartment, the gun was found in the  
16 apartment, then I think the two points legally would apply.

17 THE COURT: And the Court agrees. I mean, in this  
18 situation, constructive possession is appropriate for the  
19 enhancement to apply, and the Government's burden is relatively  
20 low to establish that first step. And, really, it would be the  
21 defense burden to show it was improbable that the weapon was  
22 connected to the offense. In this case it was in the same  
23 facility. It does not require the Defendant personally to  
24 touch the gun, but it is in proximity so it's foreseeable for  
25 the situation to occur.

1           So I'm going to overrule the objection and find by a  
2 preponderance of the evidence that the two point enhancement  
3 applies.

4           Your next objection.

5           MR. ARONOWITZ: Our next objection is we did  
6 request -- we objected that she did not receive a two point  
7 reduction for being a minor participant in this specific  
8 conspiracy alleged.

9           Her role here was basically she let her boyfriend use  
10 her car and she drove him to meetings to where he sold and  
11 picked up drugs.

12          She personally -- well, that's her role, so -- and they  
13 used the money from those drug sales to pay for joint bills  
14 in their home. As I said, they lived in the same residence.  
15 So although she did receive economic benefit from it, she  
16 also had a full time real job that she was using to pay  
17 bills as well.

18          THE COURT: Response?

19          MR. JOHNSON: Your Honor, I -- I do agree both with  
20 probation, and I also understand why they've asked for anywhere  
21 from two to four reduction. I do believe that she's less  
22 culpable than her co-defendant, Mr. Marzioli, who was really  
23 the main methamphetamine dealer as far as at this level of the  
24 conspiracy.

25          And obviously, the quantities for cocaine, which she --

1 we do prove that she knew about the methamphetamine, but the  
2 quantities of cocaine that she was dealing would result in a  
3 lower sentence. And so if the Court wants to give a two  
4 point reduction, we would not be -- we would not object to  
5 that.

6 THE COURT: So the Government is conceding they  
7 believe she qualifies under 3B1.2(b), that she qualifies for a  
8 minor participant to receive a two point level reduction?

9 MR. JOHNSON: Yes, Your Honor.

10 THE COURT: Okay. So I will go ahead and sustain the  
11 objection and then adjust paragraph 26 and add in a minus two  
12 under 3B1.2.

13 What's next?

14 MR. ARONOWITZ: Our fourth objection, unfortunately,  
15 based on the Court's earlier ruling to our first objection kind  
16 of moots that, but just for the record, we'll go ahead and put  
17 it on the record that we do believe that if the Court had  
18 allowed her not to have the -- to not have the adjustment for  
19 the use of the weapon, that she would qualify for the Safety  
20 Valve, and that would put her below the statutory minimum.

21 THE COURT: I understand. And, of course, I'll  
22 overrule the objection because she doesn't qualify because of  
23 the firearm issue.

24 I will say that -- because it was in one of the other  
25 cases that didn't proceed today. Maybe it's the last case,

1 I don't remember. A couple of my cases went away. But I  
2 had to look up some case law on this issue on the Fifth  
3 Circuit decisions, and constructive possession is sufficient  
4 to take away the Safety Valve, because someone raised that  
5 objection, that the person didn't have actual possession of  
6 the -- the objection in the other case, in doing the  
7 research, the Fifth Circuit later -- there is a decision  
8 that said actual, but I think it was taken too literal and  
9 then a later Fifth Circuit published decision said it's --  
10 constructive is sufficient to -- for purposes of Safety  
11 Valve.

12 Okay. I think that's all your objections.

13 MR. ARONOWITZ: Yes, Your Honor, and -- but we would  
14 just make one brief point. We certainly understand the Court's  
15 reasoning on that issue, but we would just like to point out  
16 that this is an issue not only of constructive possession, but  
17 of constructive joint possession, where another individual  
18 specifically says this is my firearm that was given to me as a  
19 present.

20 THE COURT: I understand. The record will note that.

21 Okay. So, ma'am, you pleaded guilty to count one,  
22 conspiracy to possess with the intent to manufacture and  
23 distribute 500 grams or more of methamphetamine, or 50 grams  
24 or more of methamphetamine actual, and 28 grams or more of  
25 cocaine base, or an amount of -- or in an amount of mixture



1 or substance containing a detectable amount of cocaine.

2 To the extent I haven't fully accepted the plea  
3 agreement, I will fully accept it now.

4 So the Court finds the information contained in the  
5 Presentence Report has sufficient indicia of reliability to  
6 support its probable accuracy. The Court adopts the factual  
7 findings, undisputed facts and the guideline applications as  
8 contained in the Presentence Report, except as changed based  
9 on the sustained objection that the Court has made.

10 MR. JOHNSON: Your Honor, maybe this would be the  
11 time to bring this up, but prior to her arrest in November with  
12 a small amount of marijuana, for which she is not going to be  
13 charged, the Government fully intended to give her the three  
14 point reduction for acceptance of responsibility.

15 Ms. Mitchell, upon her arrest, immediately cooperated.  
16 She consented to the search of her cell phone. She was  
17 there when voice calls were made to Mr. Tanner, who you just  
18 sentenced. He came over with more methamphetamine and, of  
19 course, he then turned around and cooperated, like I told  
20 you during his sentencing.

21 That led to the discovery of another firearm, many  
22 ounces of cocaine, 500 grams of methamphetamine and three  
23 additional defendants.

24 So I don't know if they're going to ask for the three  
25 points back, but I would be willing to give it to her if

1 they did.

2 THE COURT: You're being overly generous today, so --  
3 typically the Court does not give -- when you violate pretrial,  
4 which you have, I wouldn't give it back. However, the  
5 Government is asking and so -- the defense hasn't asked for  
6 that, but I'm glad you stopped me where you did before I made  
7 all my findings. So I presume you would like that back?

8 MR. ARONOWITZ: We would make that request officially  
9 now.

10 THE COURT: And since the Government is asking me to  
11 give that back -- absent that, I wouldn't give it back. I'll  
12 be candid, so -- so that would be an additional three points  
13 off. And for purposes of the record, that would be paragraph  
14 30 will be adding that.

15 Okay. Let me go ahead and continue. Again, let me  
16 indicate the Court adopts the factual findings, undisputed  
17 facts and the guideline applications except as to the  
18 objections the Court sustained and the request of the  
19 Government to add back the acceptance points.

20 Based upon a preponderance of the evidence presented  
21 and the facts in the report, while viewing the Sentencing  
22 Guidelines as advisory, the Court concludes as follows: The  
23 total offense level now is a 29. The criminal history  
24 category is still I and that provides for a guideline range  
25 of 87 to 108 months of imprisonment.

1           Let me ask, have I done that calculation correctly,  
2 since we've had a couple changes?

3           MR. JOHNSON: I believe so, Your Honor.

4           MR. ARONOWITZ: That's our understanding, Your Honor.  
5 Thank you.

6           THE COURT: Very good. So let me first call upon  
7 defense counsel if you would like to comment on what you  
8 believe the appropriate sentence should be in this case.

9           MR. ARONOWITZ: We do believe the Court should assess  
10 punishment within the guidelines, which would be, of course,  
11 under the statutory minimum. We've kind of made our argument  
12 earlier regarding why we believe in this unique case the  
13 statutory minimum is --

14          THE COURT: Well, I guess I read that incorrectly.  
15 Because Safety Valve doesn't apply, the sentence is 120 months,  
16 even though the guideline range is 87 to 108. Without Safety  
17 Valve, the sentence is 120 months, so I didn't state that  
18 correctly, so I want to correct that.

19          MR. ARONOWITZ: Right. And so to be clear, we are  
20 asking that the Court sentence her under the guidelines at 87  
21 months.

22          THE COURT: But you understand, I can't do that?

23          MR. ARONOWITZ: Understanding the Court's rulings, we  
24 understand, yes.

25          THE COURT: Right.

1 MR. ARONOWITZ: But I thought you were just asking  
2 what we wanted, so I'm just saying our position is, if we had  
3 gotten what we wanted, that's our request.

4 THE COURT: I understand. But you understand that,  
5 based on the Court's rulings, that's not -- it would be an  
6 illegal sentence.

7 MR. ARONOWITZ: Yes, Your Honor.

8 THE COURT: I don't have discretion without Safety  
9 Valve to do that.

10 MR. ARONOWITZ: Yes, Your Honor. Without Safety  
11 Valve, we're requesting the minimum of 120 months.

12 THE COURT: And I assume that's what the Government  
13 is asking me to impose.

14 MR. JOHNSON: Yes, Your Honor.

15 THE COURT: Okay. So, Ms. Mitchell, you have the  
16 right to address the Court. Now would be the time if you would  
17 like to say something.

18 MS. MAXINE MITCHELL: I just -- things just haven't  
19 really panned out the way I expected today and I really don't  
20 know what to say. I --

21 THE COURT: How so?

22 MS. MAXINE MITCHELL: I mean, I was hoping for Safety  
23 Valve. And I didn't even know that he had that firearm. So I  
24 take responsibility for my reckless lifestyle, and I feel very,  
25 very ashamed of my actions and everything that led to this

1 moment, but I just -- I didn't know about that firearm.

2 THE COURT: And I understand that's your position,  
3 ma'am, but I also -- you know, I didn't say you had actual  
4 knowledge of it. It's more constructive possession of it. And  
5 the reality is that, you know, guns are tools of the trade and  
6 it's clearly foreseeable that you would have knowledge of that.  
7 So I understand you didn't, but I -- I guess what I'm telling  
8 you is I'm being consistent with the way I've applied this in  
9 all other cases, you know, so --

10 I'm sorry. Go ahead. Anything else?

11 MS. MAXINE MITCHELL: I'm from El Salvador. We don't  
12 have firearms over there. I've never even touched a firearm  
13 before. I've never ever, ever shot a gun in my life, so it's a  
14 very, very big difference. It's -- it's a major impact in my  
15 case.

16 THE COURT: I understand. Anything else you want to  
17 say, ma'am?

18 MS. MAXINE MITCHELL: No. I'm just ashamed of all  
19 the actions that brought me here.

20 THE COURT: And I understand, ma'am, and I hope you  
21 understand. I mean, based on everything in this case, I wish I  
22 could go down to the 87 months. It's just, I have to follow  
23 the law and the enhancement applied under the law and the facts  
24 of the case, and so I can't carve out an exception just because  
25 I would like to give you a lesser sentence, if I could, so --

1 so it's not -- so I hope you understand, I have to follow the  
2 law and make those decisions, irrespective of the impact on  
3 your case.

4 Again, I don't like the result, but it is -- I hope you  
5 understand from my point of view. So I'm sorry, ma'am.

6 Any reason why the Court should not pronounce sentence  
7 at this time?

8 MR. JOHNSON: No, Your Honor.

9 THE COURT: Any reason why I shouldn't?

10 MR. ARONOWITZ: Oh, none from the defense, Your  
11 Honor.

12 THE COURT: Pursuant to the Sentencing Reform Act of  
13 1984, having considered the factors noted in 18 USC Section  
14 3553(a) and having consulted the advisory Sentencing  
15 Guidelines, it's the judgment of the Court the Defendant is  
16 hereby committed to the custody of the Bureau of Prisons to be  
17 imprisoned for 120 months on count one of the indictment, which  
18 is the statutory minimum in this case.

19 This sentence will run concurrently with any sentence  
20 imposed in the 205th District Court of Cooke County in  
21 Gainesville, Texas, Docket No. CR19-00851.

22 The Court recommends you receive appropriate mental  
23 health treatment while imprisoned and also recommends  
24 appropriate drug treatment while imprisoned.

25 The Court finds you don't have the ability to pay a

1 fine and I'll waive the fine in this case.

2 It is ordered you pay the United States a special  
3 assessment of \$100, which is due and payable immediately.

4 You are ineligible for all federal benefits listed in  
5 21 USC Section 862(d) for a period of one year from the date  
6 of this order.

7 Upon release from imprisonment, you shall be placed on  
8 supervised release for a term of five years. Within 72  
9 hours of release from the custody of the Bureau of Prisons,  
10 you must report in person to the probation office in the  
11 district to which you're released.

12 You must not commit another federal, state or local  
13 crime, and you must comply with the standard conditions that  
14 have been adopted by the Court.

15 In addition, you must comply with the mandatory and  
16 special conditions and instructions that have been set forth  
17 in your Presentence Report.

18 Let me ask counsel, do you have someplace you would  
19 like me to include geographically for purposes of placement  
20 as a recommendation to the Bureau of Prisons?

21 MR. ARONOWITZ: Yes, Your Honor, we're requesting  
22 northern California. I'm -- I think Lompoc, but I'm not sure  
23 if that's -- exactly where that is in California.

24 THE COURT: Okay. You want northern California, but  
25 what's the facility you're asking for?

1 MR. ARONOWITZ: Lompoc.

2 THE COURT: Okay. So we'll look that up and see if  
3 that's a facility that --

4 MR. ARONOWITZ: She has a very ill sister in Fresno.

5 THE COURT: Okay.

6 MR. ARONOWITZ: So I think that's -- anyway --

7 THE COURT: My staff will look and see, but you want  
8 to be around Fresno, correct?

9 MR. ARONOWITZ: Yes, but I don't think there's a  
10 facility in Fresno.

11 THE COURT: I understand, but we'll see what we can  
12 find out in terms of which one is closest to that.

13 Now, ma'am, you have the right to appeal your  
14 conviction if you believe your guilty plea was somehow  
15 unlawful or involuntary, or if there's some other  
16 fundamental defect in the proceedings that were not waived  
17 by your guilty plea.

18 Do you need a minute, ma'am? Are you okay?

19 MS. MAXINE MITCHELL: I'm sorry. What?

20 THE COURT: Are you okay proceeding?

21 MS. MAXINE MITCHELL: (Nods in affirmative response.)

22 THE COURT: Okay. You have a statutory right to  
23 appeal your sentence under certain circumstances, particularly  
24 if you believe your sentence is contrary to law.

25 However, you can waive some of those rights as part of



1 your plea agreement, and you have entered into a plea  
2 agreement which waives certain rights to appeal your  
3 conviction and your sentence.

4 With the exception of the grounds reserved in your plea  
5 agreement, you have waived any right to appeal in this case.  
6 Such waivers are generally enforceable, but if you believe  
7 the waiver is not enforceable, you would need to present  
8 that theory to the Appellate Court.

9 With few exceptions, any notice of appeal must be filed  
10 within 14 days of the judgment being entered in this case.  
11 If you're unable to pay the cost of the appeal, you can  
12 apply for leave to appeal in forma pauperis, which is  
13 without payment of fees. If you so request assistance, the  
14 clerk of the court will prepare and file a notice of appeal  
15 on your behalf.

16 Your Presentence Report is already part of the record.  
17 It's under seal. It will remain under seal unless needed  
18 for purposes of appeal.

19 Are there any charges to dismiss in this case?

20 MR. JOHNSON: No, Your Honor.

21 THE COURT: Okay. And so anything further from the  
22 Government?

23 MR. JOHNSON: No, Your Honor.

24 THE COURT: Anything further from defense?

25 MR. ARONOWITZ: Just one brief point. We -- this

1 Defendant does have a detention hearing set in -- before the  
2 Magistrate in Plano for next week. We would believe that that  
3 might be moot at this point, so we would just request that we  
4 be -- that whatever docket entry needs to be made.

5 THE COURT: Sure. I will go ahead and I do have that  
6 in front of me. I'm glad you brought that up because I omitted  
7 that.

8 So the petition was filed I think on November 9th.  
9 We'll go ahead and rule that detention issue moot since she  
10 has now been sentenced, and we'll notify the Magistrate  
11 Judge about that as well so it comes off the docket.

12 Okay. So, ma'am, you'll go back into the custody of  
13 the marshals pending placement. Thank you.

14  
15  
16  
17  
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19  
20  
21 I certify that the foregoing is a correct transcript from  
22 the record of proceedings in the above-entitled matter.

23  
24 \_\_\_\_\_  
Jan Mason

\_\_\_\_\_ Date